

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 916 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

AJAY HARIPRAKASH BADARIA

Versus

COMMISSIONER OF POLICE

Appearance:

Ms. Banna Dutta, Advocate for
MS KRISHNA U MISHRA for Petitioner
Mr.D.P. Joshi, A.P.P for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta, for
Ms.K.U. Mishra, Advocate for the petitioner and learned
A.G.P. Mr. D.P. Joshi for the respondents nos.1 and 2.

The detention order dated 8-1-1999 passed by the
respondent no.1-Commissioner of Police, Ahmedabad City

against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "A" indicate that criminal case vide CR no500/99 dated 4-1-1999 was registered against the petitioner at Naroda Police Station for the offences made punishable under the Bombay Prohibition Act. That in that case Indianmade foreign liquor has been seized from the possession of the petitioner and proceedings are pending investigation. Over and above the abovestated material of criminal case, two witnesses on assurance of their annonymity have supplied information about the bootlegging activity of the petitioner vide their statements dated 3-12-1998 and 8-12-1998 respectively.

3. That in consideration of the said material, the respondent no.1 has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail and as such the subjective satisfaction having been vitiated the order is invalid.

5. On scrutiny of papers, it appears that in the penultimate paragrah of the grounds of detention, the detaining authority has observed that though the petitioner is in judicial custody in respect to criminal case no.500/99 registered against him, it is likely that the petitioner might apply for bail at any time and get himself released on bail and thereafter he might indulge into antisocial bootlegging activity and as such, in order to prevent the petitioner forthwith, the impugned order is passed.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of

bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case also, the detaining authority having failed to consider the aspect of less drastic remedy of opposing and cancellation of bail discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 8-1-1999 passed by the respondent no.1-Police Commissioner,Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu -Ajay Hariprakash Badaria is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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